

AMPARO GONZALEZ AND ALFREDO TRINIDAD, PETITIONERS, VS. PRIMITIVO TRINIDAD AND MARIA YNARES, RESPONDENTS.*G.R. No. 45965. April 29, 1939*

Ponente: IMPERIAL, J.

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This is an appeal by certiorari taken by the petitioners from the decision of the Court of Appeals reversing that rendered by the Court of First Instance of Manila, declaring the deed of sale of a certain urban property null and void, and ordering the cancellation of the transfer certificate of title by the registrar of deeds of said city.

In civil case No. 47960 of the Court of First Instance of Manila wherein the respondents Primitivo Trinidad and Maria Ynares were the plaintiffs and the petitioners were the defendants, judgment was rendered by the Court of First Instance declaring the deed of sale null and void and dismissing, under articles 1305 and 1306 of the Civil Code, the action of the plaintiffs as well as the counterclaim of the defendants. The plaintiffs appealed to the Court of Appeals and the latter rendered the decision mentioned at the beginning of this decision.

On November 11, 1931, the then plaintiffs executed in favor of the now petitioners a deed of sale of an urban property situated in the City of Manila, for the sum of P10,000. As the property was mortgaged to the Bureau of Lands for P6,500, the purchasers assumed the encumbrance. The sale was simulated and the supposed vendors did not receive the alleged price, the idea being to save the property, which was fictitiously sold, from attachment by Dr. Ramon Papa to whom Lorenzo Perez had endorsed a note for P4,000 executed and signed by Primitivo Trinidad. Dr. Papa, however, died and the credit represented by the note was adjudicated to Carmen Papa with whom the said Primitivo Trinidad had a subsequent agreement to the effect that he would pay the note as soon as he had the money. Thus the litigation and attachment which Primitivo Trinidad feared were averted.

In their brief the petitioners contend that the decision of the Court of Appeals is erroneous: (1) because it held that articles 1305 and 1306 of the Civil Code are not applicable, and (2) because it reversed instead of affirming the decision of the trial court.

Articles 1305 and 1306 of the Civil Code are not applicable to the contract entered into by the parties because they refer to contracts with an illegal consideration or subject matter, whether the facts constitute an offense or misdemeanor or whether the consideration is only rendered illegal. The contract of sale, being onerous, has for its cause or consideration the price of P10,000 (article 1274 of the Civil Code); and both this consideration as well as the subject matter of the contract, namely, the property, are lawful and not penalized by law. However, as the contract was in itself fictitious and simulated and the supposed vendors did not receive the stipulated price, the consideration being thus lacking, said contract is null and void per se or nonexistent (article 1261 of the Civil Code). As has been held by the Court of Appeals, the object of the contracting parties or the motives which the vendors had in entering into the simulated contract should not be confused with the consideration which was not present in the transaction. The former, although illegal, neither determine nor take the place of the consideration. The author, Manresa, in his Commentaries on the Civil Code, volume 8, pages 618, 619, commenting on the

distinction between the consideration and the motives, uses the following language:

"But when the notion of consideration is applied to contracts, it represents, as it already meant in Rome, the why of the contracts, the essential reason which moves the contracting parties to enter into the contract. In this sense, expressed in the provisions of the Code, the consideration is related to the personal element of the contract, because it represents the demand of reasonable and legal motives for the determination of the wills which concur in consent. But while this is true, not less true is the relation of the consideration with the subject matter of the contract, which is so close that at times its distinction offers a real problem. In fact, in a contract like that of a sale, the thing and the price are the subject matter of the contract; but in consideration thereof, the consideration for the purchaser and the vendor is determined as indicated by the first of the definitions contained in article 1274.

"Considering the concept of the consideration as the explanation and motive of the contract, it is related to the latter's object and even more to its motives with which it is often confused. It is differentiated from them, however, in that the former is the essential reason for the contract, while the latter are the particular reasons of a contracting party which do not affect the other party and which do not preclude the existence of a different consideration. To clarify by an example: A thing purchased constitutes the consideration for the purchaser and not the motives which have influenced his mind, like its usefulness, its perfection, its relation to another, the use thereof which he may have in mind, etc., a very important distinction, which precludes the annulment of the contract by the sole influence of the motives, unless the efficacy of the former had been subordinated to compliance with the latter as conditions.

"The jurisprudence shows some cases wherein this important distinction is established. The consideration of contracts, states the decision of February 24, 1904, is distinct from the motive which may prompt the parties in executing them. The inaccuracies committed in expressing its accidental or secondary details do not imply lack of consideration or false consideration, wherefore, they do not affect the essence and validity of the contract. In a loan the consideration in its essence is, for the borrower the acquisition of the amount, and for the lender the power to demand its return, whether the money be for the former or for another person and whether it be invested as stated or otherwise.

"The same distinction between the consideration and the motive is found in the decisions of November 23, 1920 and March 5, 1924."

We conclude that the Court of Appeals did not commit the errors assigned, wherefore, we deny the remedy sought, with the costs to the petitioners-appellants. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, and Concepcion, JJ., concur.

Moran, J., see concurring opinion

CONCURRING OPINION

MORAN, J.:

I agree with the dispositive part. Under the doctrine laid down in *Bough and Bough vs. Cantiveros and Hanopol* (40 Phil., 209), when the owner of a property fraudulently conveys the same to another for the purpose of defrauding a third person, the law does not give him any remedy against this conveyance and leaves him where it finds him. The reason behind this doctrine is clear. If the vendor is to be permitted to unmake the contract after the fraud is consummated, this would practically be helping him to enjoy with impunity the effects of the fraud perpetrated.

I concur in the dispositive part of the decision on the sole ground expressed in one of the exceptions established in the case of Bough and Bough vs. Cantiveros and Hanepol, supra, to the effect that if the fraud sought to be perpetrated has not been realized, either because the third person sought to be defrauded did not like to collect his credit, or because the said credit was imaginary, the courts may unmake the simulated contract for the sake of equity. In the instant case, the order of execution sought to be frustrated by the simulated contract was never issued, and, after the death of the creditor from whom the execution was expected, his successor-in-interest has entered into an agreement with the debtor as to the payment of the obligation for an indeterminate period.

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